

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**SPECIAL CRIMINAL APPLICATION No. 491 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE P.B.MAJMUDAR**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of
the judgment ?

4 Whether this case involves a substantial question of
law as to the interpretation of the constitution of
India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ISMAILBHAI MAHAMMEDBHAI MANSURI**Versus****THE STATE OF GUJARAT AND OTHERS**

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Appearance :

MS SN QURESHI for MR MM TIRMIZI for Applicant.

MR ND GOHIL, APP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR**Date : 24/08/2006****ORAL JUDGMENT**

By filing this petition, the petitioner – externee has challenged order of his externment passed by Deputy Commissioner of Police, Zone-6, Ahmedabad City, dated 22nd August, 2005 by which the petitioner is ordered to be externed for a period of two years from Ahmedabad City police commissionerate area as well as adjoining areas of Ahmedabad

Rural, Gandhinagar, Mehsana and Kheda. Said order was challenged by the petitioner by filing an appeal under Section 60 of the Bombay Police Act. The appellate authority has confirmed the order of externment passed by Deputy Commissioner of Police, Zone-6, Ahmedabad city.

The petitioner was served with show cause notice under Section 56-B of the Bombay Police Act. In the show cause notice, it is mentioned that the petitioner is a head strong person and he is keeping knife and other dangerous articles with him. It is also mentioned that the petitioner is robbing the people of the area. It averred in the show cause notice that because of high handed activities of the petitioner, residents of Charvad, Panchpatti, Dandiavad, Timba Pol, Nani Ali ni Pol, Mastan Mohallo, Jada Bhagat ni Pol, Hanumanwali Pol and Dabgarvad are under fear. In the show cause notice there is a reference to two registered criminal cases pending against the petitioner, which are registered under Sections 143, 147, 148 and other provisions of Indian Penal Code. In the show cause notice, it is stated that the petitioner is keeping dangerous weapons with him and he is giving threats to traders and local residents and he is committing theft or robbery. Area of the activity of the petitioner is also mentioned. It is also stated in the show cause notice that the petitioner is carrying out aforesaid activity since 2004. Said show cause notice was replied by the petitioner.

After considering the reply of the petitioner, ultimately, Deputy Commissioner of Police has passed the order of externment on 22nd August, 2006 by which the petitioner is externed from the aforesaid areas for a period of two years. As stated earlier, said order of externment is confirmed in appeal.

Ms.S.N.Qureshi, learned advocate for the petitioner submitted that

in the show cause notice there is a reference about the statements of certain witnesses, whose names have not been disclosed to the petitioner. She further submitted that no particulars are given in the show cause notice as to when the petitioner has committed theft or has tried to inflict injury or gave threat to the witnesses. She also submitted that except making a general statement in the show cause notice that petitioner is trying to harass the people of aforesaid areas, no particulars about approximate time or month of the so-called incidents are given. She further submitted that, therefore, reference about the incidents in question is absolutely vague. She also submitted that by not mentioning exact date or month of the incident, the petitioner is denied his right of giving effective reply to such allegations. To substantiate her say, learned advocate for the petitioner has relied upon the decision of the Division Bench of this Court in Ashwin Chandulal Jaiswal Vs. Deputy Commissioner of Police, Vadodara and another, reported in 1990 (1) GLH 314, wherein this Court has observed as under in paragraph 9 :

“Shri Gupta has also stated in his affidavit that the Inspector, Vadi Police Station, Vadodara, had recorded statements of 11 persons in confidence. He further stated that he had applied mind on the relevant material of the case produced before him, which includes the statement of the persons recorded by the police. It is not stated in the notice that the statements of the witnesses were recorded by the police. If at all any such statements would have been recorded and intended to be relied upon, at least, reference of the statements, without disclosing the names, with the time and place of such alleged illegal activities of the petitioner should have been made in the notice so that the petitioner could have got an opportunity to explain the said circumstances or lead evidence. Without giving him an opportunity or even letting the petitioner

know that statements were recorded, the Deputy Commissioner of Police has relied on statements of 11 persons. It is true that general allegations are only required to be made in the notice, but when statements are relied upon for the externment order, at least, the person to be affected by such order should be given an opportunity to explain the allegations in the statements. The petitioner was, therefore, deprived of the opportunity to explain the circumstances, which weighed considerably with the externing authority and, therefore, also the order is vitiated.”

Mr.N.D.Gohil, learned APP has also frankly submitted that exact date or month of the incident is not mentioned in the show cause notice.

Not only that gist of the statement is not incorporated in the show cause notice, except stating that the petitioner is committing robbery or theft in a particular area but no particulars regarding time or month of the alleged incident are given. As a result of that the petitioner could not give effective reply to the show cause notice.

In the instant case, though reference is made to the statement of witnesses, the same is vague as no particulars about time or month or approximate period are given except stating that the petitioner is doing alleged activities since 2004. At least, gist of the statements recorded against the petitioner should have been mentioned in the show cause notice so that the petitioner could given effective reply to the same. Since no date or month of the alleged incidents are mentioned in the show cause notice the petitioner is denied his right of making effective reply. Considering this aspect as well as considering the judgement of the Division Bench of this Court, order of externment, which is passed after taking into consideration the statements of certain witnesses, is required

to be quashed and set aside and consequently, the order of appellate authority is also required to be quashed and set aside.

For the foregoing reasons, this petition is allowed. Order of externment dated 22-8-2005 passed by Deputy Commissioner of Police, Zone – 6, Ahmedabad city, against Ismailbhai Mahammedbhai Mansuri, which is confirmed by the State Government, is quashed and set aside. Rule is made absolute. Direct service is permitted.

(P.B.MAJMUDAR, J.)

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